

§ 4.240

Office shall contain a statement indicating no transcript was prepared.

[36 FR 7186, Apr. 15, 1971, as amended at 52 FR 26345, July 14, 1987; 52 FR 35557, Sept. 22 1987]

DECISIONS

§ 4.240 Decision of administrative law judge and notice thereof.

(a) The administrative law judge shall decide the issues of fact and law involved in the proceedings and shall incorporate in his decision:

(1) In all cases, the names, birth dates, relationships to the decedent, and shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.

(2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.

(5) A determination of any rights of dower, curtesy or homestead which may constitute a burden upon the interest of the heirs.

(b) When the administrative law judge issues a decision, he shall issue a notice thereof to all parties who have or claim any interest in the estate and shall mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision shall not become final and no distribution shall be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971]

§ 4.241 Rehearing.

(a) Any person aggrieved by the decision of the administrative law judge may, within 60 days after the date on which notice of the decision is mailed

43 CFR Subtitle A (10-1-96 Edition)

to the interested parties, file with the Superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The Superintendent, upon receiving a petition for rehearing, shall promptly forward it to the administrative law judge. The Superintendent shall not pay claims or distribute the estate while such petition is pending unless otherwise directed by the administrative law judge.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative law judge shall issue an order denying the petition and shall set forth therein his reasons therefor. He shall furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the administrative law judge shall cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. The administrative law judge shall allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition. The administrative law judge shall then reconsider, with or without hearing as he may determine, the issues raised in the petition; he may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(d) Upon entry of a final order the administrative law judge shall lodge the complete record relating to the petition with the title plant designated under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(e) Successive petitions for rehearing are not permitted, and, except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the administrative law